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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/704,808 | 11/02/2000 | John F. Finley | 1585.01 | 4313 |

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LITTLE ROCK, AR 72201

EXAMINER

MILLER, BENA B

ART UNIT PAPER NUMBER

3712

DATE MAILED: 12/28/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/704,808

Applicant(s)

FINLEY, JOHN F.

Examiner

Bena Miller

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All. b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Applicant recites in claim 1 "A device for housing"; however, dependent claims 2-10 recites "A housing device". Accordingly, it is noted that the examiner will treat dependent claims 2-10 as "a device for housing" for the purpose of this Office Action. Applicant is requested to provide a consistent use of the terminology "A device for housing" or "A housing device" throughout the claims. Regarding claims 11-20 see set forth above.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-20, drawn to a device for housing, classified in class 446, subclass 207.
- II. Claim 21, drawn to a method of making a housing device, classified in class 425, subclass unknown.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In this case, the product as claimed can be made by another and materially different process. For instance, the housing can be formed of by wood.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Joe Calhoun on December 19, 2001 a provisional election was made without traverse to prosecute the invention of I, claims 1-20. Affirmation of this election must be made by applicant in replying to this Office action. Claim 20 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with indefiniteness that is too numerous to point out in every instance. The following examples are provided for the applicant use in making corrections wherever appropriate but not specifically pointed to.

In several instances in the claims, there is lack of antecedent basis for limitations. For example only, there is lack of antecedent basis for the limitations "the frame" and "the reeds" both recited in line 1 of claim 1, "said cavity dorsally" as recited in line 3 of claim 2, "said mated pair" as recited in line 3 of claim 3 and "said contour-mimicking upper surface" as recited in line 1 of claim 8.

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In several instances in the claims, the examiner is unsure as to what structure is encompassed by the phrases such as "adapted to" as recited in line 3 of claim 1 and "sized for" as recited in line 1 in claim 6. Expressions such as those pointed above appear to recite only function or intended use of the claimed device and does not appear to add any structure to the claims. Further, it appears that claim 6 is entirely functional.

In several instances in the claims, the examiner is unsure as to what is encompassed by phrases such as "said cavity dorsally bounded by buttress" as recited in line 3 of claim 2, "ventrally oriented space essentially situated between the corresponding ventral arc" as recited in claim 3, "said housing buttress" as recited in claim 5 and "a human palate". For example only, the examiner is unsure as to what is considered to be a human palate. For more, the examiner is unsure as to what is meant by the phrase "the reed(s)" as recited in line 1 of claim 1. In US practices, parenthesis does not further limit a claim or limitation.

Additionally, in several instances in the claims, the claims appear to recite further structurally limiting on or are dependent on elements of features which are not claimed. For example only, line 1 of claim 1 indicate that what is claimed "a device for housing the frame containing the reed(s) in a caller for producing sound to attract wild game". Therefore, it is presumed that the frame, reed(s) and caller are not claimed. On the other hand, claim 3 recites further limitation on the caller.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Cooper (US Patent # 4,960,400).

Regarding claims 1 and 11, as best understood, Cooper teaches a device for housing comprising elastomeric material (col. 3, line 56) and a planar cavity (903) configured as claimed.

Regarding claims 2 and 12, as best understood, Cooper further teaches a ventral aspect and a dorsal aspect in lines 1-15 in column 3.

Regarding claims 3 and 13, as best understood, Cooper further teaches at least one resiliently-flexible reed (5) configured as claimed.

Regarding claims 4 and 14, as best understood, Cooper further teaches an end stop (83) configured as claimed.

Regarding claims 5 and 15, as best understood, Cooper further teaches a crescent flap in figure 5 configured as claimed.

The examiner considers the functional recitations of claims 6 and 16 to be inherent in the device of Cooper.

Regarding claims 7, 8, 17 and 18, as best understood, Cooper further teaches a upper surface in figure 5 configured as claimed.

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Regarding claims 9 and 19, as best understood, Cooper further teaches a human palate in figure 6 configured as claimed.

Regarding claims 10 and 20, as best understood, Cooper further teaches a concave lower surface in figure 6 configured as claimed.

Conclusion

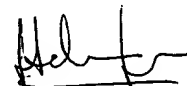
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cooper teaches a variably tensionable diaphragm game call. Marino teaches a turkey call. Meeks teaches an animal call device. Primos teaches an adjustable game call apparatus with moisture diverter and precision tuning system. Hafford teaches three sound chamber game call. Parrott et al teaches a game call. Knight et al teaches a game call. Ady teaches a deer call.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 703.305.0643.

The examiner can normally be reached on Monday-Friday.

bbm

December 21, 2001



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